IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 355 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHIKHALAL JIVRAJBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 355 of 2002

MR ASHISH M DAGLI for Petitioner No. 1-2

MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PR ABICHANDANI, ADDL.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/09/2002

ORAL JUDGEMENT

Rule. Mr. Abichandani, Ld. APP waives service of notice of rule. At the request of the parties, matter is taken up for hearing today.

2. This Revision Application arises out of a judgement and order rendered by Additional Sessions Judge, Court No. 16 in Criminal Appeal No. 43 of 2001 on August 16, 2002, confirming conviction of the revisioners for offence punishable under Section 498A, read with Section 114 of IPC by learned Chief Metropolitan Magistrate, Ahmedabad, by judgement and order dated Nov. 23, 2001 in Criminal Case No. 119 of 1997.

3. The facts of the case are that revisioner No.1 and revisioner No.2 are brothers, No.2 being the younger one. Revisioner No.1 is married to Bhanuben on 3.12.1989. Initially the married life went on smoothly, but then some disputes arose and according to the complaint lodged by Bhanuben, she was meted out physical and mental cruelty and dowry demand was also made. The case was investigated and charge-sheet filed by Police. Learned Magistrate, after considering the evidence led by the prosecution, convicted both the revisioners for offence punishable under Sections 498A, read with Sec. 114 of IPC and sentenced them to undergo RI for one year and to pay a fine of Rs. 500/-, in default to undergo RI for one month. Learned Metropolitan Magistrate also convicted both of them for offence punishable under Sections 3 and 7 of the Dowry Prohibition Act and sentenced them to undergo RI for six months and to pay a fine of Rs. 200/- each, in default to undergo RI for 15 days. Learned Metropolitan Magistrate acquitted the third accused, namely Ambaben Jivrajbhai Solanki, mother of the revisioners. Aggrieved by the said judgement and order, an appeal was preferred before the City Sessions Court and by the impugned judgement and order, learned Additional City Sessions Judge partly allowed the appeal, confirmed the conviction under Section 498A read with Section 114 of IPC, but set aside the conviction under Sections 3 and 7 of the Dowry Prohibition Act. Against

this judgement, present revision is preferred.

4. The record and proceedings are before this Court. Learned Advocate Mr. Dagli appearing for the revisioners has taken this Court through the evidence on record, so also the learned APP Mr. Abichandani.

5. Mr. Dagli submitted that except witness Laljibhai, no independent witness is examined by the prosecution. Even according to this witness, the relations between revisioner No.1 and Bhanuben were quite cordial initially. Mr. Dagli submitted that there was no corroboration to the case of the complainant about physical torture or ill-treatment. Neither there is any medical evidence, nor any independent witness is examined by the prosecution to support the case of the prosecution. The story about some dispute at the community marriage is a concoction. The person who took the complainant to the parental house has not been examined. The entire story about the complainant being thrown out of the house is concoction and an after-thought. Mr. Dagli submitted that the post-card was written with an ante-date and was got posted from a Post office from the area of the accused revisioners. All these aspects have not been considered by the Court below and therefore, revision may be allowed.

6. Mr. Abichandani, learned APP has strong objection to this revision application. According to him, there are concurrent findings of fact by two Courts and therefore this revision may not be entertained by this Court. The second limb of argument of Mr. Abichandani is that the incident complained of are of such a nature that they take place in the house and independent evidence may not be available. Still the prosecution has examined Laljibhai, who clearly states about the incident at the community marriage. Relationship between the parties in the initial stage of married life is different than the relations that may be existing around the time of the incident and therefore, initial cordial relations would not make any difference so far as case against the revisioners are concerned. Mr. Abichandani therefore urged that revision may be dismissed.

7. Having regard to rival side contentions and having gone through the evidence on record, at the out-set it may be noted that here is a case where apart from the principle that the Court will not interfere in exercise of revisional jurisdiction against concurrent findings of fact by the two Courts below, even on merits

the revisioners do not have a case.

8. Complainant Bhanuben is examined at Ex. 5 and she in clear terms states that both the revisioners used to ill-treat her, give her beatings and abuses and even community people were required to intervent. Against revisioner No.2 it is categorically stated that he used to instigate revisioner No.1 and because of the instigation, revisioner No.1 used to bear her. She states that she went to the matrimonial house on 10.12.1995 after a compromise, but still thereafter also she was being beaten and on 11.6.1996, she was thrown out of the house. She has been cross-examined by the learned Advocate for the accused persons and suggestions are made about their defence which have been denied. Her version in the examination-in-chief remains uncontroverted and nothing comes out in cross-examination to raise slightest suspicion about her ill-treatment, harassment, physical and mental.

9. Apart from the oral version, there is a post-card Ex. 11 written by the complainant Bhanuben on 3.6.1996, wherein she has stated that she is so badly treated that the situation has become unbearable. She has stated that she thinks of committing suicide and it is only because of the young child that she is not able to do so. The letter bears a Postal stamp which leads to an inference that it is written and posted at the relevant time.

9.1 Ranchhodbhai Vallabhbhai Gohil, father of the complainant is examined at Ex.8. He also supports the say of the complainant about she being meted out with physical and mental cruelty. Cross-examination is again in form of making suggestions of the defence. No material comes out to doubt the veracity of the say of the witness in examination-in-chief.

9.2 Pramilaben Ranchhodbhai is the mother of the complainant, who is examined at Ex.10 and Laljibhai is an independent witness who is examined at Ex.22. He clearly says that he and father of Bhanuben had gone to the matrimonial house of Bhanuben for fetching her. He speaks of an earlier quarrel in the community marriage and it was with his intention that Bhanuben was sent to the house of the revisioner. Later on when mother of Bhanuben was sick, he had gone to call her, but Bikhabhai's mother did not send her saying that they need Bhanuben as there is nobody to look after the house-hold work. The witness is cross-examined. He admitted that he has no personal knowledge about the incident, but he categorically states that both parties are known to him.

He also states during cross-examination that initially there was no dispute between Bhanuben and her husband for about 5 years. He however, adds that they were smooth either. There is evidence that revisioner No.2 used to instigate revisioner No.1 and at times, used to even physically give slaps to Bhanuben. This evidence has remained unchallenged. This indicates that the relationship of the complainant and her husband, barring initial 5 years, was not smooth. This is reflected from the letter also.

10. All these factors taken collectively, both the Courts have accepted the prosecution case about the cruelty meted out to Bhanuben and have recorded and confirmed the conviction under Section 498A read with Section 114 of IPC.

11. In view of the above evidence, there is no need for any interference with the order of conviction recorded by the learned Metropolitan Magistrate and confirmed by the Sessions Court, in exercise of revisional powers by this Court.

12. Learned Advocate Mr. Dagli has however, vehemently submitted that revisioner No.2 is a young man who is serving in Arvind Mill; revisioner No. 1 is engaged in tailoring work; they have old parents to support; revisioner No.1 is even today inclined and is keen for a settlement with the complainant for re-union; he has a young son who is an only child in that generation in the family and therefore, sympathy may be shown to the revisioners. Mr. Dagli has placed reliance on the decision of the Bombay High Court in Smt. Madhuri Mukund Chitnis Vs. Mukund Martand Chitnis, reported in 1992 Cr. Law Journal 111 and submitted that substantive sentence may not be awarded, but fine may be enhanced. Mr. Dagli submitted that if the revisioners come out of prison, attempts may be made for a settlement. Learned Additional Public Prosecutor Mr. Abichandani is heard on this aspect also.

13. During the trial the revisioners were on bail, but after conviction since 16th August, 2002, both of them are in jail. Having regard to the overall facts of the case, considering the social and family background of the revisioners, the sentence part requires reconsideration. Instead of keeping the accused behind the bars for the convicted period and undergoing substantive sentence, if the sentence is reduced and fine enhanced, out of which some compensation is ordered to be paid to the complainant, a better balance would be struck

between the victim and the convict. Under the circumstances, following order is passed.

14. Revision is partly allowed. Conviction and sentence of the revisioners recorded by the learned Chief Metropolitan Magistrate and confirmed by the Learned Additional Sessions Judge, Ahmedabad in Criminal Appeal No. 43 of 2001 by order dated 16.8.2002 is hereby confirmed. The substantive sentence of one year awarded to the revisioners is reduced to six months. The fine of Rs. 500/- imposed on each of the revisioner is enhanced to Rs. 10,000/- each, in default in payment of fine, each of them would undergo further imprisonment for a period of six months. If and when fine is paid, an amount of Rs. 7,500/- from the fine paid by each of the accused (Totalling to Rs. 15,000/-) shall be paid to the complainant Bhanuben w/o Bhikhalal Jivraj Solanki, by way of compensation. Rule made absolute accordingly.

(A.L.Dave, J.)

*/Mohandas